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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ALBERTO FERNANDEZ, Petitioner, **v.** **M. MARTEL, Warden,** Respondent.	08-0816 JLS (CAB) **RESPONDENT'S ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS** The Honorable Cathy Ann Bencivengo

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Respondent, M. Martel, Warden, Mule Creek State Prison, by and through his counsel, Edmund G. Brown Jr., Attorney General of the State of California, and Kristen Kinnaird Chenelia, Deputy Attorney General, files this Answer to Petitioner's Petition for Writ of Habeas Corpus pursuant to the order of this Court dated May 8, 2008. Respondent alleges as follows:

I.

Petitioner Alberto Fernandez is in the lawful custody of Respondent pursuant to a valid judgment of aggravated sexual assault of a child (Cal. Penal Code § 269), committing a forcible lewd act upon a child (Cal. Penal Code § 288(b)(1)), and committing a lewd act upon a child 14 or 15 years old (Cal. Penal Code § 288(c)(1)). (Lodgment 1 at 104-13, 236-38.) The trial court sentenced him to 15 years to life plus eight years and eight months in prison. Judgment was entered before the Honorable Leo Valentine Jr., in San Diego County Superior Court, case number SCD191759, on May 19, 2006. (Lodgment 1 at 185-89, 244-45.)

II.

The Petition appears to have been filed within the applicable limitations period. 28 U.S.C. § 2244(d).

III.

Fernandez appears to have exhausted his state remedies as to his claims.

IV.

The highly deferential standard of federal habeas corpus review established by the Antiterrorism and Effective Death Penalty Act of 1996, 28 U.S.C. § 2254, applies to Fernandez's claims.

V.

The state courts made numerous express and implied factual findings. Fernandez has shown no grounds why the presumption of correctness mandated by 28 U.S.C. § 2254(e)(1) should not apply to these factual findings.

VI.

Fernandez is not entitled to an evidentiary hearing because he generally relies on the same facts as he did in state courts. 28 U.S.C. § 2254(d)(2), (3); *see Lambert v. Blodgett,* 393 F.3d 943, 972 (9th Cir. 2004).

VII.

Respondent is in possession of all transcripts of the trial proceedings, and has lodged the transcripts of all pertinent trial proceedings, briefs, and opinions in accordance with revised Rule 5(c) and (d). Respondent incorporates all of the lodgments by this reference into this Answer.

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VIII.

The relevant facts and procedural history are set forth in the accompanying Memorandum of Points and Authorities. Except as expressly admitted, Respondent denies each and every allegation of the Petition and specifically denies that Fernandez's confinement is illegal, or that any of his rights have been or are being violated in any way.

WHEREFORE, for the reasons set forth more fully in the accompanying Memorandum of Points and Authorities, the Petition should be denied with prejudice, the proceedings dismissed, and any request for a Certificate of Appealability denied.

Dated: July 11, 2008

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

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Chief Assistant Attorney General

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CERTIFICATE OF SERVICE BY U.S. MAIL

Case Name: ***Fernandez v. Martel*** No.: **08-0816 JLS (CAB)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On July 11, 2008, I served the following documents:

RESPONDENT'S ANSWER TO PETITION FOR WRIT OF HABEAS CORPUS

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Electronic Mail Notice List

I have caused the above-mentioned document(s) to be electronically served on the following person(s), who are currently on the list to receive e-mail notices for this case:

None

Manual Notice List

The following are those who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing):

Alberto Fernandez
CDC #F-25887
Mule Creek State Prison
P. O. Box 409040
Ione, CA 95640
In Pro Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 11, 2008, at San Diego, California.

Maria G. Stawarz — Declarant

Maria G. Stawarz (signature) — Signature

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